

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B3  
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Date:  
January 12, 2017

### Legend

X =

A =

Estate =

Trust =

State =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated July 22, 2016, and subsequent correspondence, submitted on behalf of X by its authorized representatives, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

### Facts

The information submitted states that X was incorporated under the laws of State on Date 1. X elected to be an S corporation effective Date 2. However, no election was made to treat Trust as a qualified subchapter S trust (QSST) effective Date 2. It is represented that Trust meets the definition of a QSST under § 1361(d)(3). In addition, A and Estate did not properly consent to X's S corporation election. Accordingly, X's S corporation election was ineffective. In addition, you represent that certain consents to X's S corporation election lacked some of the information required in such consents by §§ 1.1362-6(b)(1) or (b)(2).

X represents that there was no tax avoidance or retroactive tax planning involved in the failure of Trust to timely file a QSST election or in A or Estate's failure to consent to X's S corporation election. It is represented that X and its shareholders have treated X as an S corporation and Trust as a QSST since Date 2. In addition, X and its shareholders agree to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

#### Law and Analysis

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that the term "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not, among other requirements, have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(c)(2)(A)(i) provides that, for the purposes of § 1362(b)(1)(B), a trust all of which is treated (under subpart E of part I of subchapter J of Chapter 1) as owned by an individual who is a citizen or resident of the United States, may be an S corporation shareholder.

Section 1361(d)(1) provides that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2), the trust is treated as a trust described in § 1361(c)(2)(A)(i), and for purposes of § 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under § 1361(d)(2) is made. Section 1361(d)(2)(A) provides that a beneficiary of a QSST may elect to have § 1361(d)(1) apply.

Section 1361(d)(2)(A) provides that a beneficiary of QSST (or his legal representative) may elect to have § 1362(d) apply.

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) is terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. Section 1362(d)(2)(B) provides that any termination under § 1362(d)(2)(A) is effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) or § 1361(b)(3)(B)(ii) by any corporation (i) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (ii) was terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken so that the corporation for which the election was made or the termination occurred is a small business corporation or a QSub, as the case may be, or to acquire the required shareholder consents; and (4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agree to make the adjustments (consistent with the treatment of the corporation as an S corporation or a QSub, as the case may be) as may be required by the Secretary with respect to this period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation or a QSub, as the case may be, during the period specified by the Secretary.

### Conclusion

Based solely on the facts submitted and representations made, we conclude that X's S corporation election was ineffective on Date 2 as a result of the failure of the beneficiary of Trust to make a QSST election under § 1361(d)(2) for Trust and the failure of A and Estate to consent to X's S corporation election. We further conclude that the ineffectiveness of X's S corporation election constituted an inadvertent invalid election within the meaning of § 1362(f). Consequently, under § 1362(f), X will be treated as an S corporation from Date 2 and thereafter provided that X's S corporation election was otherwise valid and not otherwise terminated under § 1362(d).

This ruling is contingent on the beneficiary of Trust filing an election under § 1361(d)(2)(A) for Trust with an effective date of Date 2 with the appropriate service center within 120 days from the date of this letter. A copy of this letter should be attached to the election under § 1361(d)(2)(A) and to the consent statements. In

addition, A and the beneficiaries of Estate must each sign a written statement as described in § 1.1362-6(b)(1) consenting to X's S corporation election effective Date 2. The written statements must be filed with the appropriate service center within 120 days from the date of this letter, indicating that the statement(s) are to be associated with X's originally filed Form 2553.

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X was otherwise a valid S corporation or whether Trust is eligible to elect to be treated as a QSST.

With regard to any defective consents to X's S corporation election, we suggest that you attempt to perfect such consents through the procedure described in § 1.1362-6(b)(3)(iii).

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited for precedent.

Pursuant to a power of attorney on file, we are sending a copy of this letter to X's authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the rulings requested, it is subject to verification on examination.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):  
Copy of this letter  
Copy for §6110 purposes